

REMARKS

This is in response to the first Office Action mailed March 25, 2005. The Office Action has been fully and carefully considered. As a result, Applicants have made the foregoing amendments and now offer the following remarks in support of the patentability of the claims. Claims 1-23 now appear in the case.

Interview Summary

Applicants wish to express their sincere appreciation to Examiner Underwood for the courtesies extended to Applicants' undersigned representative at the personal interview conducted on June 22, 2005. At that interview, the claims, the references applied in the Office Action, and the differences therebetween were discussed. Applicants' representative made arguments regarding the propriety of some of the rejections and made suggestions for amending some of the claims.

The undersigned explained the nature of the restraint that is the subject of the present invention, and contrasted it generally with the safety devices of the Zimmerman and Schmitz patents applied against the claims in the Office Action. It was then explained that what the Examiner has referred to as a "collar" in Schmitz is not "attached" to the actuator as required by claim 2, for example, and was in any event not something that could reasonably be said to suggest a modification to Zimmerman. It was further explained that nothing resembling the "hook member" set forth in claim 7 was present in Zimmerman.

Applicant's representative expressed an intent to present claims 2 and 7 in independent form without substantial amendment and argue the deficiencies of the Zimmerman patent as to the "hook member" of claim 7 and the lack of suggestion or

motivation to combine what the Office Action refers to as the "collar" of Schmitz with Zimmerman. The undersigned pointed out that the respective devices of Schmitz and Zimmerman were mutually exclusive alternatives rather than combinable features.

Applicant's representative then expressed an intent to amend the original independent claims (1, 8, and 13) to define over Zimmerman by developing claim language to bring out the aspect that the restraint is attached over or above the linkage. Examiner Underwood made no commitment, but acknowledged a difference between the restraint of the present application and the safety support of Zimmerman.

Formal Matters

The Examiner has pointed out a minor typographical error on page 5, line 8 of the specification. This has now been corrected by rewriting paragraph 14 of the specification. In addition, paragraph 10 has been rewritten to correct obvious typographical errors.

The Rejection of claims 1, 5, 6, 7, and 13-18 under 35 U.S.C. 102(b)

Claims 1, 5, 6, 7, and 13-18 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Zimmerman (U.S. Patent No. 3,918,601).

Zimmerman discloses a work machine having a "locking lever means 40" which can be pivoted between a position in which it effectively "locks" the linkage assembly, and an inactive position. One end of the lever 40 is pivoted to the frame adjacent the front axle housing and the other end can engage the linkage assembly at a bracket 70 on bellcrank 30. The lever 40 is so shaped (top 66 and side 68) as to fit within the bracket against plate 72. The lever can be secured to the bracket by bolt means 64.

This is illustrated best in Fig. 2 and described best in the paragraph bridging columns 3 and 4 of Zimmerman.

In the present application, restraints 145 are used to secure the linkage assembly 125. The restraints secure the linkage assembly by connecting to it from above. In a disclosed embodiment, the restraints on one end have a hook 255 that fits over the linkage assembly and, on the other end, attach to the chassis of the work vehicle at the front axle. Additionally, to keep the hydraulic cylinders that control the lift arm from floating, collars are provided on the rod ends of the cylinders and abutting against the cylinder ends.

Original claim 1 has been amended to require that the first-end of the restraint is structured to fit over the linkage assembly so as to removably attach the first-end portion above the linkage assembly. This is in keeping with the stated intent to prevent motion of the tilt and lift functions of the linkage assembly. See the sentence bridging pages 4 and 5 of the specification and see the last sentence in paragraph 15 of the specification. It is plain to see that Zimmerman does not disclose or contemplate that the corresponding first end of the locking lever be attached in this manner. On the contrary, the stated purpose in Zimmerman of providing a safety device reconciles with the fact that the locking lever engages the linkage from below, in effect, to prevent accidental descent of the equipment during servicing. Accordingly, amended claim 1 is not anticipated by Zimmerman. Claims 5-7 directly depend from claim 1 and are patentable over Zimmerman for at least the same reasons as claim 1. The amendment to claim 6 is merely to take into account the amendment made to claim 1.

Claim 13 has been amended in like manner to claim 1. Claim 13 thus patentably defines over Zimmerman for the same reasons advanced with respect to claim 1 above. Claims 14-18 depend from claim 13 and are patentable at least for the same reasons as claim 13.

The rejection of claims 2-4 under 35 U.S.C. 103(a)

Claims 2-4 stand rejected under 35 U.S.C. 103(a) as unpatentable over Zimmerman in view of Schmitz, Jr. et al. (U.S. Patent No. 4,039,093) (hereafter Schmitz). The position taken in the Office Action is that Schmitz somehow provides sufficient evidence to rectify the fact that Zimmerman fails to disclose the recited collar. The Office Action concludes obviousness. However, claims 2-4 depend from amended claim 1 and are patentable for at least the same reasons as claim 1. The amendments to claim 2 are for clarification only. In addition, new claims 20-22 are presented corresponding to original claims 2-4. The remarks showing why the Office has failed to establish a prima facie case of obviousness in attempting to combine Zimmerman and Schmitz will be set forth below in connection with new claims 20-22.

The rejection of claims 8-12 under 35 U.S.C. 103(a)

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman. Here, the Office apparently construes claim 8 to require complete removal and reattachment of the restraint each time restraint is necessary. The Office then concludes that, while this is not the manner in which the restraint of Zimmerman operates, it would have been obvious "to attach and to remove the restraint in

Zimmerman everytime one secured and unsecured the restraint to protect against thief of the restraint and/or weather and field damage to the restraint when not in use.”

Without concurring in either the claim construction, motivation, or conclusion put forward by this rejection, Applicants note only that the rejection is moot in view of the recitation now present in claim 8 of attaching the first-end portion of the restraint over the linkage assembly so as to removably attach the first-end portion above the linkage assembly commensurate with the amendments made to claims 1 and 13, but in method format. It remains only to state with respect to claim 8 that Zimmerman does not disclose, suggest, or otherwise render obvious the now claimed method. That being the case, claim 8 plainly defines over Zimmerman and should be allowed. Claims 9-12, each dependent upon claim 8 either directly or indirectly, are allowable at least for the same reasons as claim 8.

New Claim 19

Original claim 7 has been rewritten as new claim 19. Claim 19 includes all the limitations of original claim 1. Claim 7 requires “at least one hook member” and “the first-end portion of the restraint being the hook member.” While paragraph 3 of the Office Action states that “[r]egarding claim 7, note 48 engages 72 and is thus broadly a hook,” Applicants cannot concur in this conclusion. Applicants’ representative noted at the interview that there was nothing in Zimmerman that reasonably could be said to correspond to the claimed hook member. It is now reiterated that no reasonable interpretation of the engagement between 48 and 72 of Zimmerman responds to the

requirement that the “first-end portion of the restraint being the hook member” as recited in new claim 19.

First, the element designated 48 in Fig. 2 of Zimmerman is plainly part of the bracket means 70 (see column 3, line 46 and note lead line 70 is misdirected in Fig. 1) rather than part of lever 40. Thus even if elements 72 and 48 could be collectively construed to be a hook (a construction which Applicants categorically dispute), they are not part of the first end-portion of the restraint as claimed. Rather, they are separate elements, forming a bracket, that are attached to the bellcrank lever as clearly shown in Fig. 1.

Second, to interpret the elements 48 and 72 as “broadly a hook” runs counter to proper claim interpretation as expounded at MPEP 2111 and 2111.01. During examination, claim terms are to be given their broadest reasonable interpretation, consistent with the specification. Words not otherwise defined must be given their plain meaning as it would be understood by those having ordinary skill in the art. Here, the Office Action gives an interpretation to the term hook member that runs counter to what one skilled in the art would ordinarily understand to be a hook member. Accordingly, the interpretation cannot fairly be said to be a reasonable one. Zimmerman cannot, consistent with proper claim interpretation, be said to anticipate original claim 7, now rewritten as new claim 19. For these reasons, allowance of claim 19 is requested.

New Claims 20-22

Original claims 2, 3, and 4 stand rejected under 35 U.S.C. 103(a) as unpatentable over Zimmerman in view of Schmitz. Original claim 2 has been rewritten

as new claim 20 and includes all the limitations of original claims 1 and 2. New claims 21 and 22 depend from claim 20 and correspond to original claims 3 and 4. The position taken by the Office Action as to original claims 2-4 will now be considered with respect to new claim 20-22.

The position taken in the Office Action is that Schmitz somehow provides sufficient evidence to rectify the fact that Zimmerman fails to disclose the recited collar. The Office Action concludes obviousness. However, no *prima facie* case of obviousness has been established.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and must not be based on Applicants' disclosure. See MPEP § 2143. The burden lies with the PTO to establish a *prima facie* case. See MPEP § 2142.

Schmitz provides a safety lock for a boom arm. This includes alternative mechanisms 22 (Fig. 1), 42 (Fig. 3), or 58 (Fig. 4). The Office Action takes the position that element 68 (Fig. 4 of Schmitz) is "synonymous with applicants' collar" and concludes that it would have been obvious "to provide a boom lock on the Zimmerman cylinder 24 in view of the teaching in Schmitz to provide direct protection to the

hydraulic cylinder.” The elements of a *prima facie* case of obviousness, set forth in the preceding paragraph, are not satisfied by this rejection.

First, there is no motivation to somehow combine any teachings or suggestions found in Schmitz with Zimmerman. Plainly, Zimmerman and Schmitz disclose safety mechanism of the same general class. But a careful review of the two patents laid side-by-side reveals that they are essentially mutually exclusive solutions to the general problem of boom or linkage support. There is nothing to suggest the combining of one with the other. In Zimmerman, the lever 40 fully supports the linkage assembly from beneath with no hint that there might be some reason to provide further support via the hydraulic cylinders. As a matter of fact, a primary reason for the support in Zimmerman is to permit removal of the hydraulic cylinders. On the other hand, Schmitz suggests boom support by mechanism 58 (or 42) by actual engagement with the cylinder itself. What one skilled in the art would glean from Schmitz and Zimmerman is that there are alternative ways to support a lift boom. There is simply no suggestion in either reference that it would be desirable or beneficial to somehow provide a collar on a cylinder of Zimmerman.

Second, there is no reasonable expectation of success as to the combination suggested. Once again, the two devices, that of Schmitz and that of Zimmerman, are essentially mutually exclusive. One skilled in the art would not perceive that the two could be combined at all. Evidence of this is apparent in the embodiment of Fig. 1 of Schmitz which is generally similar in construction to the restraint of Zimmerman in the sense that it engages a portion of the boom itself, while the other embodiments of

Schmitz (Figs. 3 and 4) engage one of the hydraulic cylinders. One skilled in the art would elect one or the other (a device engaging a cylinder as in Schmitz or a device engaging the boom as in Zimmerman), and would not recognize or expect any success at combining them.

Third, even if the structure or the reasonable teachings of the two references, Zimmerman and Schmitz, were to somehow be combined, not all the claimed elements would result from the combination. This is because the clevis 68 (or 46) in Schmitz does not fairly constitute “at least one collar being attached to the actuator” (emphasis added) as recited in claim 2. Rather, to the extent that the Schmitz clevis is a “collar,” it is attached to the lock bar 58 (or 42) and merely abuts the cylinder when the lock bar freely falls onto the cylinder upon being released from its inoperative position. In this regard, see, for example, column 4 of Schmitz at lines 18-27. Thus, to the extent one could actually combine the respective teachings of Zimmerman and Schmitz (and Applicants maintain that they could not do so with any reasonable expectation of success), the result would be a clevis that freely falls to abut the cylinder, not one that is attached to the cylinder as specified in the claim.

Accordingly, none of the three required elements of a *prima facie* case of obviousness has been met. The Office has not met its burden. The rejection of claims 2-4 (now claims 20-22) for obviousness should be withdrawn and claims 20-22, it is urged, should be found allowable.

New Claim 23

New claim 23 corresponds directly to original claim 9 rewritten in independent form to include all the limitations of original claim 8. Thus, claim 23 requires “attaching at least one collar to the actuator.” The rejection of original claims 8-12 under 35 U.S.C. 103(a) over Zimmerman failed to address this claimed element. Inferring by analogy that the Office would rely on Schmitz for the feature (as was done in rejecting original claim 2), the arguments that have been advanced above explaining why there is no support for a conclusion of obviousness in somehow providing a collar in Zimmerman apply equally to claim 23. Zimmerman simply fails to remotely suggest the required “attaching at least one collar to the actuator” and Schmitz, to the extent it would be relied on, gives no hint of a suggestion to make up this deficit. Accordingly, new claim 23 is clearly patentable and allowance is requested.

Conclusion


In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of each of pending claims 1-23. If upon receipt and review of this response the Examiner is of the view that there remain matters which need to be addressed in order to expedite allowance of this application, then the Examiner is invited to telephone the undersigned at 571-203-2757 so that prosecution may be brought to a mutually beneficial conclusion.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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